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REPORT FROM THE COMMISSION TO THE COUNCIL

assessing the progress reported by Italy to the Commission and the Council on the recovery of the amount due from milk producers by virtue of the additional levy for the periods 1995/96 to 2001/02

(pursuant to Article 3 of Council Decision 2003/530/EC)

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This assessment report has been produced pursuant to Article 3 of Council Decision 2003/530/EC of 16 July 2003 on the compatibility with the common market of aid that the Italian Republic intends to grant to its milk producers (hereinafter: 'Council Decision'), in accordance with which the competent Italian authorities must report annually to the Council and the Commission on the progress made by them in recovering the amount due from the producers by virtue of the additional levy for the periods 1995/96 to 2001/02.

Under Article 1 of the Council Decision, the aid the Italian Republic grants to milk producers, by itself making payment to the European Union budget of the amount due from them to the EU by virtue of the additional levy on milk and milk products for the periods 1995/96 to 2001/02 and by allowing these producers to repay their debt by way of deferred payment over a number of years without interest, is exceptionally considered to be compatible with the common market on condition that:

– repayment is in full by yearly instalments of equal size, and

– the repayment period does not exceed 14 years, starting from 1 January 2004.

Under Article 2 of the Council Decision, the granting of the aid is conditional upon Italy declaring the total additional levy for the periods concerned to the European Agricultural Guidance and Guarantee Fund (EAGGF), now the European Agricultural Guarantee Fund (EAGF), and upon it deducting the outstanding debt in three yearly instalments of equal size from the expenditure financed by the EAGGF for November 2003, November 2004 and November 2005 respectively. The declaration by Italy of the total additional levy for the periods concerned was duly made by letter of 26 August 2003. Deductions of the outstanding debt were duly made from expenditure financed by the EAGGF for November 2003, 2004 and 2005.

Article 3 of the Council Decision requires the competent Italian authorities to report annually to the Council and the Commission on the progress made by them in recovering the amount due from producers by virtue of the additional levy for the periods 1995/96 to 2001/02.

Under that provision, the Italian authorities presented their tenth report to the Commission by letter from the AGEA (*Agenzia per le Erogazioni in Agricoltura*, Italian Agricultural Payments Agency) dated 13 November 2014 concerning payment of the 2013 instalment.

The report provides the Commission's assessment of the progress reported by the Italian authorities for 2013 in recovering the additional levy both for the seven periods covered by the Council Decision and for those not covered by it.

Payment of the levy under the 2003 instalment scheme

The Council Decision authorising Italy to itself make payment to the European Union budget of the additional levy due from its milk producers related to 25 123 producers in 2005, the date of the first report to the Council. This figure fell to 21 819 for 2013.

Of all the reported producers subject to the levy for the seven periods covered by the Council Decision, 15 431 opted to pay under the 2003 instalment scheme. In 2004, before the first yearly instalment was paid, the 15 431 producers which had opted to pay under the instalment scheme owed EUR 345 million in total, which represented about one quarter of the total outstanding amount due from the producers which had refused to opt into the instalment schemes. The producers responsible for the lowest levels of excess production therefore mostly opted to pay under the instalment scheme. However, the producers with greater levels of excess production (some 8 000 producers to whom around EUR 1 billion in levy due over the seven periods is billed) instead preferred not to pay under the instalment scheme. Nevertheless, it should be pointed out that, every year, the Italian authorities receive new applications to pay by instalments. In 2013, 160 new applications were submitted, corresponding to EUR 8.7 million in total. The total amount covered by the instalment scheme is EUR 362.17 million.

The tenth yearly instalment totalling EUR 26 165 096 was to be paid by 11 331 producers before 31 December 2013. The checks carried out by the Italian authorities show that 11 132 producers duly paid amounts totalling EUR 25 664 142 during 2013, which means that 98.24 % of the producers paid 98.2 % of the amounts due under the tenth instalment within the time limit. As regards the nine previous instalments, timely payment had been recorded for 99.6 %, 97.9 %, 99.5 %, 99.7 %, 96.4 %, 96.2 %, 90.5 %, 98.3 % and 96.9 % of the due amounts respectively. The total levy collected under the first ten instalments therefore amounts to roughly EUR 270 739 640 (almost 97.3 % of the total amount due under these yearly instalments).

Whilst these levels are certainly indicative of a commitment on the part of the producers participating in the instalment scheme to meet their obligations, the Commission considers that the follow-up given to cases where the payment has not been recorded within the time limit is a prime indicator of the level of commitment on the part of the Italian authorities to ensure correct observance of the conditions of the scheme and ultimately collection in full of the levy due.

As regards the tenth instalment, no information is available for the payments for the remaining 199 producers for a sum of EUR 500 948.

With regard to the ninth instalment period, 285 producers failed to make payment corresponding to EUR 786 682.83 at the end of 2012. According to the information received from the Italian authorities, all these cases were notified by the central authorities to the relevant regional authorities in order to enforce payment of the entire amount due with an interest rate outside the instalment scheme. Of the 285 producers first thought not to have paid, it later emerged that 191 of them had in fact paid. By contrast, the 94 producers which had not actually paid the ninth instalment lost their entitlement to pay by instalments and enforced recovery procedures were initiated against them.

Holdings for which the possibility of payment by instalments has been revoked

The failure to pay any one yearly instalment results in exclusion from the scheme and consequently makes producers liable to seizure of the entire amount still outstanding with accrued interest.

Ten years on from the start of the 2003 scheme for payment by instalments, a total of 613 holdings have had the right to pay by instalments revoked for a total debt, broken into instalments, of EUR 22 817 190.

However, of this amount, EUR 7 128 700 had been paid by instalments before the right was revoked and EUR 4 297 074.81 was recovered after the revocation, meaning that the total outstanding remaining debt is EUR 11 391 415 and relates to 251 holdings.

These figures show that the diligence shown by the Italian administration in collecting the levy from the producers who were excluded from the scheme after failing to pay an instalment is far from satisfactory. Moreover, milk producers have had to renounce their legal actions before the Italian courts in order to be entitled to pay under the instalment scheme. The lack of recovery therefore seems to be due not to the potential length of court proceedings, but rather to the incapacity of the Italian administration to effectively recover those amounts.

Six-month deferral of payment and its consequences for State aid

Pursuant to Article 2(12)(k) of Italian Decree-Law No 225 of 29 December 2010, which, after amendments, became Law No 10 of 26 February 2011, Italy authorised the deferral, until 30 June 2011, of the 2010 instalment due, in principle, by 31 December 2010 under the 2003 instalment scheme approved by Council Decision 2003/530/EC.

In Commission Decision C(2013) 4046 final of 17 July 2013, the Commission declared that the deferral of the payment of the milk levy instalment due by 31 December 2010 constituted aid incompatible with the internal market. Furthermore, it considered that this aid had entailed a breach of the conditions laid down in Council Decision No 2003/530/EC, and had created – for those who benefited from it and thus had gone beyond the framework established by the Council – new state aid that was unlawful within the meaning of Article 1(f) of Council Regulation (EC) No 659/1999 and incompatible with the internal market as well.

In Commission Decision C(2013) 4046 final, the Commission directed Italy to arrange to have the incompatible aid, together with interest, refunded by the beneficiaries of the deferral of payment.

The Italian authorities have initiated the administrative procedures necessary to recover the aid. However, on 8 November 2013, Italy brought an action against the Commission Decision before the General Court (Case T-527/13). On 24 June 2015, the General Court delivered a judgment partially annulling the Commission Decision. It confirmed the Commission's approach as regards the aid inherent in deferring the payment of the instalment due by 31 December 2010, but rejected the Commission's conclusions concerning the new aid created for those who benefited from the deferral and thus had gone beyond the framework of the Council Decision.

Additional levy due for the period 2002/2003

For the periods 1995 to 2002, Italy itself made payment to the European Union budget of the additional levy due from the producers, pursuant to Council Decision No 2003/530/EC.

Since 2004, Member States have paid the additional levy directly to the EU budget, pursuant to Council Regulation (EC) No 1788/2003 of 29 September 2003.

However, the period 2002/2003 is covered neither by the Council Decision nor by the new scheme established in 2004. Given the overrun of the national quota allocated to Italy, the Italian milk producers responsible for that overrun owed EUR 227.77 million to the EU budget for the period 2002/2003.

Of this amount, EUR 56.58 million has been recovered and paid to the EU budget, while EUR 40.68 million has been cancelled by decision of a court of law. Thus, on 31 December 2013, the milk producers still owed EUR 130.50 million to the EU budget by virtue of the

additional levy for the period 2002/2003. Of this amount, EUR 9.35 million is covered by the 2009 instalment scheme.

Levy due which is not covered by the 2003 instalment scheme or the 2009 reimbursement system

Reference has already been made in previous reports to the low uptake of the 2003 instalment scheme and the 2009 reimbursement system (with an interest rate equal to a reference rate for the European Union increased by several percentage points) in terms of the amount of levy to be recovered.

In fact, the total amount of levy charged for the periods 1995/96 to 2008/09, as notified by Italy, is EUR 2.305 billion. Of this amount, EUR 566.71 million was recovered by Italy between 2003 and 2013: EUR 270.74 million under the 2003 instalment scheme, EUR 4.99 million under the 2009 reimbursement system and EUR 290.98 million outside the instalment schemes.

Of the remaining amount, that is, EUR 1.738 billion:

- a small part (EUR 199.88 million) is covered by the instalment schemes established by Italy in 2003 and 2009, which some milk producers liable for payment of the levy have opted into;

- EUR 211.23 million has been declared irrecoverable following bankruptcy of the producer or cancellation of the levy by court;

- there remains EUR 1.327 billion due from the producers who have refused to opt into the instalment schemes, most of whom have contested the additional levy before the Italian courts.

Thus, around 87 % of the overall amounts still due by virtue of the levy for the periods 1995/96 to 2008/09 (EUR 1.527 billion) are not covered by either of the instalment schemes.

The total amount of levy collected outside the instalment schemes amounts so far to just EUR 290.98 million. According to the report submitted by the Italian authorities, this extremely low rate could be due to the large number of court cases brought by the producers who are liable for payment of the levy and who had the recovery process suspended.

In its previous assessment reports presented to the Council, the Commission expressed the view that annual reports submitted by Italy should specifically describe the situation concerning the pending court cases and provide details confirming payment by producers whose oppositions to payment were rejected in court. Without such details, the Commission was not previously in a position to correctly monitor progress in the collection of the part of the levy not included in the instalment scheme.

The Commission welcomed the information contained in the Italian authorities' report on the tenth instalment as regards the current overall situation concerning recovery of the levy under the instalment scheme established in 2003.

However, the figures provided by the Italian administration show that insignificant progress has been made in collecting the amounts not included in that instalment scheme. In particular, insignificant progress has been made in recovering the enforceable amounts which were never contested or which were contested but confirmed by the relevant court, or for which cases are ongoing but suspension orders were not issued.

On 31 December 2013, EUR 240.92 million of these enforceable amounts had actually been collected, while the enforceable amount still outstanding was EUR 827 million. The

Commission would further point out that, of the EUR 1.527 billion still due for the periods 1995/96-2008/09, EUR 500 million is not yet enforceable as it is the subject of a legal dispute and a court order has been issued for recovery to be suspended. However, it will have to be recovered once judgments have been returned in favour of the administration.

As regards the currently enforceable amounts due for the periods 1995/96-2008/09, only 22.5 % of the amounts have actually been collected.

As regards the periods covered by the Council Decision (1995/96 to 2001/02), the amounts collected correspond to 26.6 % of the amounts currently enforceable. Within the enforceable amounts, a distinction should be made between

- the amounts which were not contested: of the enforceable EUR 172.12 million, EUR 109.65 million has been recovered, which corresponds to a recovery rate of 63 %;

- the amounts which were the subject of a legal dispute, but for which no order was issued to suspend recovery: of the enforceable EUR 256.20 million, only EUR 28.38 million (11 %) has been recovered;

- the amounts which were confirmed by court: of the enforceable EUR 639.97 million, EUR 102.89 million (16.5 %) has been recovered.

The Commission underlines the extremely poor progress made in recovering the last two categories of amounts. Likewise, from the EUR 172.12 million which was never contested and therefore could be recovered immediately, there is still EUR 62.48 million to be recovered. With regard to the levy due for the periods 1995/96 to 2001/02, this means that EUR 19.54 million has remained unrecovered for over ten years.

The Commission greatly regrets the slow progress made in recovering the part of the levy which was not covered by the 2003 instalment scheme or the 2009 reimbursement system.

The Commission has been continuing to closely follow the recovery process in Italy, particularly the recovery of the levy not covered by the instalment scheme. The Commission departments have on several occasions brought their observations (including negative remarks) to the attention of the Italian authorities and requested detailed information on different aspects concerning the recovery of the milk levy.

Nevertheless, in spite of numerous repeated requests by the Commission, the majority of the amounts due have still not been recovered by the Italian authorities.

On 20 June 2013, the European Commission ordered Italy, under Article 258 TFEU, to submit its observations on the insufficient action taken to address the shortcomings identified in the recovery of the additional levy for the periods 1995 to 2009. However, Italy's reply did not reveal that any significant progress had been made regarding recovery.

On 10 July 2014, the Commission sent a reasoned opinion to Italy for not taking sufficient measures to guarantee the effective and efficient recovery of surplus levies from milk producers that exceeded their individual quota during the years in which Italy exceeded its national milk quota.

Conclusion

The Commission considers that, insofar as the conditions for the implementation of the instalment scheme approved by the Council in 2003 are met, the progress made by the Italian authorities in recovering the amount due from the producers who opted to pay under the

instalment scheme for the periods 1995/96 to 2001/02 demonstrates that the scheme has been managed in a satisfactory manner.

As for the amounts of levy not covered by the instalment schemes, the Commission has already expressed – in its successive assessment reports to the Council since 2010, and then in the letter of formal notice sent to Italy on 20 June 2013, and finally in the reasoned opinion issued on 10 July 2014 – its dissatisfaction with the lack of significant progress in recovering the milk quota levy.

According to the information provided by the Italian authorities in their report on the tenth instalment, in this case, no major new developments can be reported in the actual collection of the levy not covered by the instalment schemes. In view of the large amount of the unpaid levy and the length of time it has gone unrecovered, it must be concluded that the efficiency and effectiveness of EU law is and has been far from ensured by the Italian authorities. This led the Commission to decide, on 26 February 2015, to bring an action for failure to fulfil an obligation before the Court of Justice of the European Union, as provided for by Article 258 TFEU.